1948.

File No. O Govt. of India/48

Legal **DEPARTMENT**

A **BRANCH**

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R&S

Subject:— Opinions Under the Government of India Act, 1935.

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SMT/17.5.

Opinion of the D.L.A.

It is presumed that E. & I.Deptt. desires to prosecute the candidate S.L.Chikangoudar. If so, the Court will have power to decide under section 517, Cr.P.C. how the money should be disposed of and the question now raised for D.L.A's advice will not arise. A prosecution can lie against the candidate only if the examiner is considered a public servant as defined in section 21, I.P.C. to decide which, it will be necessary to know (1) who appointed the examiner and under what authority, (2) whether he was in the service or pay of the Crown, and if not, (3) whether he was paid any remuneration for the performance of public duty. E. & I.Deptt. may furnish the information on the aforesaid points to enable D.L.A. to express his opinion on the point of prosecution.

Sd/- P.M.LAD.

Remembrancer of Legal Affairs.

U.O. to E. & I.D., No.990-Conf2, dated the 22nd July 1948.

GNT/17.8.

Office of the R.L.A.

Government of India Act,1935. Section 174. Disposal of amounts of bribery in cases not taken to Court.

Disposal of the amounts of bribery in cases which are not taken to a Court is not covered by any authority. However such amounts may be credited to Government as the offerer of bribes who has parted with money cannot have any rightful claim to the return of money.

Sd/- P.M.LAD.

Remembrancer of Legal Affairs.

U.O. to E. & I. Department, No. 528-Confl, dated the 29th September 1948.

SET/17.5.

A joint sitting of the two Chambers of the Provincial Legislature is possible under the provisions of sections 63(1) and 74 of the Government of India Act, 1935. Section 74 has no application to the present case. Section 63(1) provides that the Governor may address the Legislative Assembly, or in the case of a Province having a Legislative Council, either Chamber of the Provincial Legislature or both Chambers assembled together and may for that purpose require the attendance of members. It is understood that there has been no instance in this Province of an address by the Governor under the provisions of this section. There have been instances, under the corresponding provision of section 20, of the Governor-General addressing both the Chambers of the Central Legislature assembled together, and it appears that after the Governor-General so delivered his address the member dispersed without further discussion or without transacting any business. The right given to the Governor of addressing the Chambers of the Legislature in Joint session need not be restricted as to mere formal addresses. It is a valuable right intended for the purpose of enabling the Governor to draw the Legislatures attention to important topics and to invite expression of views thereon by way of a discussion. There is nothing in section 63(1) or in any other provision of the Government of India Act or rules of procedure for the Assembly or Council which precludes a discussion by the Chambers so assembled together upon a matter which the Governor in his address specifically invites them to take into consideration. A Legislature can establish a convention which is required to suit the importance of any particular occasion conformably with the spirit of the Constitution Act and so long as it is not in conflict with the provisions of that Act or of the established rules of procedure. There would

There would thus be no objection to the Chambers assembled together taking into consideration by way of a discussion the draft Constitution of India if the Governor summons a joint session for that purpose and invites the members to do so in his address.

2. A motion would not appear necessary for this purpose. "Motion" has been defined in the Bombay Legislative Assembly Rules to mean the statement of a matter brought forward for the consideration and to include a resolution and an amendment of a motion. There is no rule of procedure which demands that a matter cannot be taken into consideration by th Legislature unless a statement of that matter is formally placed before the House in the form of motion. The Governor's invitation to the Houses assembled together to take the Constitution into consideration would be sufficient and no further motion need be moved especially as the intention of the Hon'ble the Premier appears to be that no decision of the Houses so assembled is to be sought upon this matters. It is only where a matter requires the decision of the Assembly or the Council that a question has to be put upon a motion made by a member (see rules 23 of the Bombay Legislative Assembly Rules and 22 of the Bombay Legislative Council Rules). Moreover, if a motion is moved it will afford an opportunity to any member either to oppose it or to move amendments thereto or to force a decision thereon. It appears from the precedent of the year 1935 that the Council rejected a motion made by the then leader of the House that the Council do proceed to discuss the report of the Joint Parliamentary Committee on Indian Constitutional Reforms. At the time of the War Resolution in 1939 an amendment was moved to the motion and a decision both on the motion as well as on the amendment was forced. In what order to avoid any possibility of a dissenting voice being expressed by

by way of any amendment to the motion or for the purpose of forming a decision thereon, it would be advisable not to make a formal motion.

3. The following procedure may be adopted in respect of the Governor's address and the discussion following it. Under section 63(1) the Governor will require the attendance of members of both Chambers. In his address the Governor may invite the members assembled together to consider the draft Constitution and may, if necessary, say that the record of their discussion would be forwarded to the Constituent Assembly for information. No doubt the rules regarding joint sittings are primarily framed with reference to the joint sitting contemplated by section 74. However, when both Chambers assemble together for the purpose of hearing the address and for discussion thereon, that can also be said to be a joint sitting. There should be no objection to following the procedure of such a joint sitting which is outlined in section 84(4) and under which the President of the Legislative Council or in his absence such persons as may be determined by rules of procedure made under that section shall preside. After the address is over, the Governor will leave and then the Hon'ble the President if present will take the chair. In his absence the Hon'ble the Speaker will preside The discussion will then commence without any formal motion.

4. It may perhaps be desirable for the Hon'ble the Premier to settle this procedure with the Hon'ble the President and the Speaker and, if necessary, with the leaders of parties in both Chambers.

SNT/17.5.

Sd/-

Office of the R.L.A.

Statement of the Case.

In exchange of his Non-Agricultural No. 49 admeasuring 1058 square yards, Mr. Dawood Abdul Aziz, agreed to accept a final plot measuring 850 square yards subject to certain conditions. By G.R.,R.D. No.4882/28, dated 9-7-1930, Government gave approval to the said settlement, subject to the conditions mentioned by Mr. D.A.Aziz in his letter dated the 4th June 1929 addressed to the Land Manager, Bombay Suburban Districts Bombay. These conditions were as follows:

(1) That he would not have to pay any betterment charges to the Development Department,

(2) that he would agree to accept the final plot in the condition in which it then was;

(3) that he would not build on more than one-fourth area of the final plot;and

(4) that he would agree to all the conditions mentioned in the HH form signed by him. He might also be allowed to build sheps.

2. It appears that Mr. Dawood A. Aziz signed the HH form sometimes in 1929-30 agreeing to observe the building regulatons contained in Schedule II. One of the conditions was that the building on the plot shall be set back so as to leave not less than twenty feet space open to the sky from the boundry line of the road and passage parallel there to (Condition 7(d)). The plot changed hands and now one Mr. G.L. Rindani has become the registered occupant of the plot.

3. On 15-10-1946, Mr. Rindani submitted a plan of the proposed building on the plot for Collector's approval On scrutinizing the plan the Collector observed that the plot abuts on the Sion-Trombay Road which is a Major District Road abd that a margin of 83' from the Centre line of this road is required to be left in view of orders in G.R.,R.D. No.10204/24/VIII, dated 27-6-46. Read with G.R.,P.W.D. No.680/36, dated 27-8-1945. The proposed building, however, was to be erected at a distance of 25' which was objectionable. The Collector therefore, did not grant sanction, but requested the the occupant to agree to execute a fresh agreement in form HH agreeing to leave a margin of 83'. The occupant is, however, not willing and is requesting the concession to

concession to erect the building leaving a margin of 20!

4. The Collector considers that as the occupant has already executed an agreement in the ~~xf~~ form HH he would be entitled to take advantage of the 20' margin. The Government in R.D., however, do not agree. Relying on R.L.A.'s opinion No.4801, dated the 12th May 1947, they hold that agreement in form HH is unilateral and does not bind Government and hence the present orders regarding set back of buildings can be strictly and rigidly enforced without fear of their legality being challenged. The Collector doubts whether this is possible. He observes:

Colle... "Plots in Suburban Schemes are sold by Government after obtaining an offer in the ~~xx~~ form prescribed by Government subject inter alia to the execution of the agreement in form HH appended to the Land Revenue Rules. The offers are sanctioned by Government and the purchasers are informed of the Government sanction. The occupancy price is then recovered from the purchasers and possession of the plots handed over. The agreement in form HH is thereafter executed by the purchasers under Rule 43 of the Land Revenue Rules and the sanad in form KK granted to them under Rule 54, Land Revenue Rules. The contract is thus completed on the terms and conditions of the offer, the HH form agreement and the sanad in form KK The conditions of sale having been accepted by Government and the purchasers they are binding on the purcha-sers as well as on Government.

The opinion of the Remembrancer of Legal Affairs, contained in his U.O.R. No. 4801, dated the 12th May 1947 (a copy of which has been obtained by me from the Revenue Department) is that agreements in Form HH are unilateral and do not bind Government. This refers to cases where the sales have been sanctioned by the Collector as a subordinate of the Commissioner and does not refer to cases where the sales have been sanctioned by Government as in the case in question. It is therefore submitted that a clear opinion may be obtained from the Remembrancer of Legal Affairs because a number of cases will be affected if the opinion contained in the U.O.R. dated the 12th May 1947 is made applicable to cases where sales are sanctioned by Government".

5. In R.L.A.'s opinion No. 4801, dated the 12th May 1947, the R.L.A. advised that where a grant was not evidenced by an agreement conforming to the provisions of section 175(3) of the Government of India Act, 1935 that grant can be cancelled. That opinion will equally apply to the present case of Mr. Aziz if there is no concluded contract between him and the Government. What is material, therefore, is to see whether the facts of the case establish a valid, concluded and enforceable agreement between Government and the party concerned. In this connection attention is invited to section 175(3) of the Government of India Act, 1935, whereunder all contracts made in the exercise of the executive authority of the Province shall be expressed to be made by the Governor of the Province and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise. It is, therefore apparent that what is necessary to establish a valid and enforceable contract is that there must be an agreement executed between the Governor and the party concerned. An agreement in Form III is merely a unilateral agreement executed by the intending occupant and such agreement not being in conformity with section 175(3) cannot be considered to be valid. It was in this sense that the R.L.A. in his opinion No.4801, dated the 12th May 1947 opined that the agreement in Form III would not be binding on Government. As stated above that opinion will apply even to this case and the agreement in Form III executed by Mr. Aziz would not be binding on Government.

6. This, however would not be sufficient to dispose of this case. In Government Circular, Home Department, No. 5940/3-I.I, dated the 22nd October 1941 (which was issued in consultation with the then Advocate General, Mr. M.C. Setalvad) it is stated : *p.315,File Govt.of I. II/41.

"The question whether under the above (i.e. section 175) provisions a contract must necessarily be - evidenced by a formal document in the nature of an indenture or deed is not entirely free from doubt. In Secretary of State for India in Council versus Bhagvandas Goverdhandas reported in 40 Bom. L.R. 19, the High Court has taken the view that under section 30 of the Government of India Act, 1915, a formal document or deed is not necessary and that a

18 to 22

that a contract can be concluded by correspondence between the contracting parties. In order however that such correspondence should constitute a concluded contract, it is essential that any offer made or accepted by Government should be expressed to be made or accepted by the Governor of Bombay."

7. In his recent opinion, No 5 of 1948, the Advocate General (Mr. C.K. Daphtary) also advised:

"Any contract, therefore, in order to be enforceable against Government must be expressed to be made and must strictly comply with the statutory provisions. It is not necessary that such contract should be contained in a formal document, and may be contained in correspondence. But even so, a contract to be effective, must comply with the terms of the section."

It is not clear how a contract by correspondence can comply with the provisions of section 175(3) of the Government of India Act except that it is carried on on behalf of the Governor. In the present case besides an agreement in Form III there is on record a letter from Mr. Anis making xxx a certain offer and approval of Government to the settlement arrived at expressed in a Government Resolution. Possibly on these facts a contract can be spelt out but as the matter is not free from doubt the Advocate General is requested to advise whether there is or a concluded contract and whether Government Orders regarding set-back can be enforced notwithstanding the agreement in Form III. The matter is important as the decision is likely to affect a large number of cases.

Sd/- P.M.LAD.

1/9

Remembrancer of Legal Affairs

U.O. to the Advocate General, Bombay, No. 8499

Dated the 4th September 1948.

No. 40 of 1948.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 20th September 1948.

U. R. to the Advocate General, Bombay, No. 8499 dated the 4th September 1948.

O P I N I O N.

From the papers I find that Dawood A. Asia has signed H.H. form some time in 1929/30. The Government Resolution R.D. No. 4882/28 is also dated 9th of July 1930. Thus all the relevant facts relate to the year 1929/30. Accordingly the case is governed by Section 30 of the Government of India Act, 1915. Under the said Section every contract to be valid and enforceable should be on behalf of and in the name of the Secretary of State in Council. Under Sub-Section 2 of Section 30 of the said Act the contract requires to be executed by such persons and in such manner as the Governor-General-in-Council by resolution may direct or authorise. The contract so executed may be enforced by or against the Secretary of State in Council for the time being.

From the papers I do not find the original letter of offer. I also do not find any reference amongst the relevant papers to the Secretary of State in Council.

The point in question is covered by a decision of the Bombay High Court (Secretary of State for India in Council Vs. Bhagvandas Gowardhandas) reported in 40, Bom.L.R. page 19. Under the said decision it is not necessary that a contract in order that it may comply with Section 30 of the Government of India Act must be by Deed, i.e. under seal. A Contract will be spelt out from the correspondence. No doubt, the use of the word "executed" suggests that a formal contract executed between the parties is required to be entered into. However, the decision lays down that a formal contract of that character is not necessarily required and that such a contract might be entered into by letters provided that it was plain that the correspondence was carried on on behalf of and in the name of the Secretary of State and that the contract as finally concluded by correspondence was executed by a person authorised by a resolution in that behalf.

In view of the aforesaid decision, the contract, if any, in favour of Dawood, A. Asia is unforceable against the Government.

Advocate
General.

Office of the R.L.A.

As the matter was not free from doubt the Advocate General was consulted. A copy of his opinion together with the Statement of the Case is forwarded herewith.

Sd/- P.M.LAD.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9144. dated 27th September 1948.

SRT/18.5.

From the letter of the Bombay Provincial Co-operative Land Mortgage Bank Limited, at p. 83 ante and from the specimen copy of the Debenture at p.91-92 ante it appears that the debentures of that Bank are registered debentures negotiable by transfer and registration in the books of the Bank and that Bank will not have any regard to any claim thereto except that of the registered holder for the time being.

2. From the reply of the Bombay Provincial Co-operative Bank Ltd., at p.87 ante it appears that the debentures of that Bank are bearer debentures. No specimen copy of these debentures appears with these papers.

3. Section 8 of the Negotiable Instruments Act defines the "holder" of a negotiable instrument as any person entitled in his own name to the possession thereof and to receive or recover the amount due thereunder from the parties thereto. Secretary to Government is not a person in the eye of the law and no suit is maintainable in his own name for recovery of the amount due under the debentures at least in respect of the debentures specified in paragraph 2 above. Any such suit will have to be filed in the name of the Province of Bombay and for that reason it is not legally advisable to have them in the name of the Secretary.

4. From the specimen debenture of the Bombay Provincial Co-operative Land Mortgage Bank Ltd., it will appear that it contains a promise to pay the money and being a contract it is advisable that the registered holder should be the Governor of Bombay as required by section 175(3) of the Government of India Act, 1935. The debentures were not before the R.L.A. when his opinion No.6206 dated 5th July 1948 was given in which attention was concentrated on the vesting of property and not on the contractual aspect.

Sd/- P.M.LAD,
17/9/48.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8920 dated 20th September 1948.

SNT/18.5.

Office of the R.L.A.

No change is necessary in the expression "British subject" in the form of the Domicile Certificate appended to Government Resolution in the P. and S.D. No. 1586/34-IV, dated the 15th February 1943 (see sub-section (4) of section 262 of the Government of India Act, as adapted, and section 2 of the India Naturalisation Act, 1926).

2. Although the Indian States are said to have been merged in the Indian Dominion, they have not become part of the Province comprised in the Dominion of India. The subjects of such States will, therefore, continue to be State subjects.

Sd/- P.M.LAD.

Remembrancer of Legal Affairs.

U.R. to P. and S.D., No. 11367, dated the 2nd December 1948.

SMT/18.5.

Office of the R. L. A.

Whether Press Note is a Government Order.

Government of India Act, 1935.

The Press-Note, not being in conformity with section 59 of the Government of India Act, 1935, cannot be considered in law to have the force of a Government Resolution though it may have been issued in amplification of the Government Resolution No. 5547/45, dated 4-12-1947.

Sd/- P.M.LAL.
Remembrancer of Legal Affairs.
dated the 28th November 1948.

U.R. to R.D., No. 11135.

SHT/18.5.

Office of the R.L.A.

Attention is invited to R.L.A's opinion No.2010, dated the 28th March 1936. As pointed out in that opinion, the power of appointing the Sheriff after Part III of the Government of India Act, 1935, came into force was vested in the Governor or his delegate and that in exercising that power the Governor has to act with the aid and advice of his Minister. In cases relating to the functions exercisable with the aid and advice of his Ministers, the Governor is to be guided by such advice and therefore it is not essential that such cases should be shown to the Governor before decision (see R.L.A's opinion No. 11566, dated the 3rd December 1947). Papers relating to the appointment of the Sheriff need not therefore be sent to the Governor before the appointment is made.

Sd/- P.M.LAD. 7/12

Remembrancer of Legal Affairs.

U.O. to P. & S.D. No. 667-Confl. dated the 8th December 1948.

SHT/18.5.

Office of the R. I. A.

Under section 241(3) of the Government of India Act, 1935, as adapted by the India (provisional Constitution) Order, 1947, rules framed under sub-section (2) of section 241 shall be so framed as to secure that in the case of a person who before the commencement of Part III of the Act was serving in a civil capacity no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on 5th March 1946 or by the Governor General or the Governor as the case may be. Under this section power has been vested in the Governor to make adverse changes in the conditions of service even of a Government servant serving in connection with the affairs of a Province since before 1-4-1937.

2. The position stated above does not, however, affect, in view of the provisions of section 10 of the Indian Independence Act, 1947, persons who having been appointed by the Secretary of State in Council to a civil service of the Crown in India continue on or after the date of the establishment of the Dominion to serve under the Government of a Province or who having been appointed by His Majesty before 15-8-1947 to be judges of a High Court continue on and after that date to serve as judges. Sub-section (2) of section 10 provides :-

"(2) Every person who-

(a) having been appointed by the Secretary of State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the Government of either of the new Dominions or of any Province or part thereof; or

(b) having been appointed by His Majesty before the appointed day to be a Judge of the Federal Court or of any Court which is a High Court within the meaning of the Government of India Act, 1935, continues on and after the appointed day to serve as a judge in either of the new Dominions,

shall be entitled to receive from the Governments of the Dominions and Provinces or parts which he is from time to time serving or, as the case may be, which are served by the courts in which he is from time to time a judge, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters, or as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the appointed day."

It will be seen from this provision that the persons appointed by the Secretary of State or the Secretary of State in Council along with the Judges of the Federal Court or the High Court are entitled to the same conditions of service as respects remuneration, leave and pensions as

as.....

pp. 36-40

as they were entitled immediately before 15th August 1947. The Indian Independence Act has thus guaranteed to the officers appointed by the Secretary of State and to the Judges of the Federal Court and the High Court the same conditions of service as respects remuneration, leave and pension to which they were entitled before 15th August 1947. It is true that sections 247 and 221 of the Government of India Act, as adapted by the India (Provincial Constitution) Orders 1947, make some-what different provisions. But the Indian Independence Act, 1947 will prevail over those provisions. A similar question as regards the inconsistency between the provisions of section 10 of the Indian Independence Act and section 247 of the Government of India Act as adapted has arisen and the point has been referred to the Advocate General for final opinion.

3. As regards the conditions of service of persons belonging to police force, as pointed out in H.L.A.'s opinion No.23L-P dated 29-9-1937, the conditions of service of subordinate ranks of such force will be regulated by such rules or orders as may be made by Government from time to time (see section 243 of the Government of India Act.)

Sd/- P.M.LAD.
11/10

Remembrancer of Legal Affairs.

U.O. to P. & G.D., No. 548-Genl dated 19th October 1948.

CNT/18.5.

office of the R.L.A.

Indian Tramways Act, 1886, section 4. Government of India Act, 1935, section 311(2).

Tramway from Sevalia Railway Station. Permission for construction

It appears from the plan attached to the P.W.D. file that the Sevalia Cement Works, Sevalia, desire to construct a tramway line from the siding of the Sevalia Railway Station on the B.B. & C.I. Railway to the Cement Factory site across the Thasra-Godhra road and have approached Government for permission under the Indian Tramways Act, 1886. The question raised for R.L.A.'s consideration is whether the tramway proposed to be constructed forms a continuous line of communication with a federal railway and, if not, whether this Government can permit the crossing of the Godhra-Thasra road.

2. Under section 4(1) of the Indian Tramways Act, 1886, Government can authorised the construction of a tramway on an application being made under clause (a) or (b). Under section 3 clause (16), "Government", in relation to any tramway which is or when completed will be, a federal railway, as defined in sub-section (2) of section 311 of the Government of India Act, 1935, means the Central Government and in relation to any other tramway means the Provincial Government. As defined in section 311(2) of the Government of India Act, 1935, "railway" includes a tramway not wholly within a municipal area; "federal railway" does not include any railway not being a minor railway; and "minor railway" means railway which is wholly situate in one unit and does not form a continuous line of communication with a federal railway whether of the same gauge or not. As stated above, the Sevalia Cement Works proposes to construct the tramway from the siding of the Sevalia Railway Station on the B.B. & C.I. Railway to the Cement Factory site. This tramway would obviously be a continuous line of communication with the B.B.&C.I. Railway, which is a federal railway; and it would be wholly in one unit, that is to say, in the Province of Bombay. Consequently, the tramway which is proposed to be constructed, would not be a minor railway but would be included in the federal railway as defined in section 311(2) of the Government of India Act, 1935. The authority empowered to authorise the construction of the tramway would be the Central Government. The applicant may therefore be directed to approach the Central Government in the first instance. The second question does not survive.

P.M.Lad.
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 11592 dated the 7th December 1948. (Please see file C.Tramways/48.).

SRT/18.5.

(Below copies of the Government of India, Ministry of Defence letter, No.222/SC/LRSD/48/605-DS/49, dated 21st February 1949).

VERY URGENT.

No.6048-A/45-II.

Revenue Department,
Secretariat, Bombay,
11th March 1949.

Forwarded to all the departments of the Secretariat (except the Separate Department) in continuation of Government Endorsement, No.6048-A/45-II, dated 2nd July 1948 and with the request to observe strictly the instructions contained in paragraph 5 of the Government of India's letter so far as they are respectively concerned.

By order of the Governor of Bombay,

Sd/-

Additional Under Secretary to the Government of Bombay,

Revenue Department.

SRT/18.3.

No.222/30/LHSD/48/655-D8/49.
Government of India,
Ministry of Defence,
New Delhi, the 21st February 1949.

To

All Provincial Governments.
Chief Commissioners.

PERMANENT TRANSFER OF PROJECTS TO PROVINCIAL GOVERNMENTS.

Sir,

I am directed to invite a reference to Government of India, Ministry of Defence letter No.1477/D8/48, dated the 12th April 1948, in which a procedure for the transfer to Provincial Governments of camps etc. constructed for the defence services during the last war, was suggested. Paragraph 1(vi) of this letter relates to the question of transfer of lands occupied by these camps.

2. It has been represented that in certain cases where projects have been permanently transferred to a Provincial Government, the lands on which they stand are still held under requisition which was effected originally, on behalf of the Central Government and for a specific purpose, i.e. successful prosecution of the war. The use of requisitioned land in contravention of the provisions of Rule 75A of the Defence of India Rules under which, and for the purposes not enumerated therein, is illegal, and is also open to criticism as being contrary to the actual or implied assurances given by this Government from time to time that such land would be released when no longer required for defence purposes.

3. The correct action, therefore, is to acquire the land either under the Requisitioned Lands (Continuance of Powers) Act, 1947 or, under the Land Acquisition Act, 1894.

4. The land occupies by projects permanently transferred to Provincial Governments, ceases to be a Central Government responsibility from the date of transfer and instructions were issued to Lands Hirings and Disposals Officers to ensure that payment of compensation etc. is debited to Provincial Governments from such dates. In view, however, of the time required to complete the process of acquisition/requisition etc.it has been the practice to hold such land under requisition for a period of 120 days from the date of transfer, which period, it was considered, would be ample for effecting acquisition or requisition as the case may be.

(P.T.O.

2. I am, therefore, to request that in future cases of permanent transfer of wartime created camps to Provincial Governments they should take steps to acquire the title to the land under these camps within 120 days of transfer. I am to add that all previous cases of transfer where land is still held under original requisition should be similarly regularised before the 1st June,1949.

Yours faithfully,

Sd/-

(C.A.RAMAKRISHNAN),
Under Secretary to the Government of India.

Copy to:

Director, Lands, Hirings and Disposals (AO).

SWP/18.5.

No.6048-A/45.

Revenue Department,
Secretariat, Bombay,
16th August 1949.

From

G.V.Badekar, Esquire, I.C.S.
Secretary to the Government of Bombay,
Revenue Department.

The Secretary to the Government of India,
Ministry of Defence,
New Delhi.

Subject:- Lands and Buildings.
Surplus Ministry of Defence
assets in the Province of Bombay.

Sir,

With reference to correspondence resting with your letter, No.1/D.S(b)/48/453408/49, dated 7th February 1949, I am directed to state that the Government of Bombay considers it necessary to move the Government of India to revise the terms and conditions (subject to which military surplus are to be transferred to it) in the manner indicated below.-

Terms relating to permanent transfer of Surplus property specified in paragraph 1 of Government of India, Ministry of Defence letter, No.1/T-D/S/48, dated 12th April 1948, as amended by the Government of India letter, No.1/D/S(b)/48/453408/49, dated 7th February 1949.

(i) It is laid down that if the Provincial Government and the Lands Hirings and Disposals Service cannot agree as to the price to be paid by the former within two months of its transfer, the latter may report the case to the Government of India for final decision which will be accepted by the Provincial Government. Though there is no reason to believe that the Lands Hirings and Disposals Service's report to the Government of India will be purely one sided, mistakes of fact are liable to creep in and it is therefore considered desirable that the Lands Hirings and Disposals Service should supply the Provincial Government with a copy of their report to the Government of India immediately after the report is made. Term (iv) may therefore please be amended accordingly.

(ii).....

(ii) The definition of "current market value" may be included in the terms and conditions by way of explanation or amplification and that definition should be based on the two following assurances:-

"I assure you that we have no intention of interpreting the expression 'current market value' in its narrowest sense, We will take a broad view and will take into consideration the fact that the Provincial Government does not purchase assets created by the Defence Department for making profit but for the good of the public", vide paragraph 2 of the Honourable Sardar Baldev Singh's demi official letter, dated 9th January 1947 to the Honourable the Premier of Bombay "It was not the intention (of the Government of India) that the expression 'current market valuation' should be interpreted in it s narrowest sense. It is appreciated that the value of a property must depend to a certain extent on the use to which it is to be put and due weight will be given to this consideration in determining the sum to be claimed from a Provincial Government. The Government of India have no intention in of demanding from Provincial Governments . the full commercial price that any willing buyer would be prepared to pay if given the unrestricted use of the land or building concerned" vide paragraph 3 of the Government of India, Defence Department letter No.39-D.G(3)/44, dated 5th January 1946.

Terms relating to temporary transfer of property not declared surplus mentioned in paragraph 2 of the Government of India, Ministry of Defence letter, No.1477-D/S/42, dated the 12th April 1946, as amended by the Government of India letter,No.1(6)/(b)/42/(S)-DP/49, dated 7th February 1948:-

(a) The Government of Bombay agree that, without the Government of India's previous permission, no extensive constructions etc. should be made by the Provincial Government in case of properties given to it on temporary transfer basis. It is, however, only fair that when such extensive constructions etc. have been made with the Government of India's permission at the Provincial Government's expense, the Government of India should pay to the Provincial Government, the current market value of the extensive constructions etc. This needs to be brought out in the terms and conditions.

(b) It has been laid down that the Provincial Government should pay rent in respect of temporarily transferred properties at 6% of its capital cost or its current market value, whichever is greater plus the recurring charges viz. rent of land on which the property stands, etc This Government agreed to pay rent at 5% of the capital cost or the current market value, which ever is less plus the rent in respect of the land and other outgoings such as Local taxes etc., if any. Since Provincial Government properties are not leased to the Government of India at rates higher than 5% and the current rate of interest on the gilt edged securities is between 2½ and 3% only, there is no justification to claim more than the rate of 5% suggested above. The terms and conditions may, therefore, be amended accordingly.

(c) Since the Provincial Government will have to pay rent at the full economic rate of 5% as suggested above in respect of properties temporarily transferred to it for the period of occupation it is not necessary to ask it to share the cost of terminal compensation and expenses on the restoration of the project to the original condition. The Government of India will have to bear these expenses in any case and even if the property is not temporarily transferred to a Provincial Government. Also, the Government of India is saved the liability in respect of rent etc. for the period of the temporary transfer because if the Provincial Government would not accept temporary transfer the property must remain on the Government of India's hands, so long as it is not declared as permanently surplus to its needs.This Government does not therefore accept this term which may be amended accordingly.

I am to request you to be so good as to move the Government of India in the matter and to communicate to this Government their final decision as quickly as possible.

Yours faithfully,

C.V.MEHTA.
Secretary to the Government of Bombay,
Revenue Department.

(P.T.O.

No.6048-A/45. Bombay, 16th August 1949.

Copies with copies of Government of India Ministry of Defence letter, No.1/DC/(2)/48/45.D/8/49, dated 7th February 1949, forwarded, in continuation of Government Endorsement of even number dated 11th March 1949 to——

the Superintending Engineers of Circles,

all the departments of the Secretariat (except the Separate Department),

for information.

By order of the Governor of Bombay,

Sd/- (R.T.Royal.)

For Secretary to the Government of Bombay
Revenue Department.

SEI/12.5.